

Claims 1-10, 12-17, 19-22, 24-38 are pending.

#### **EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. William Smith on April 19, 2011.

The application has been amended as follows:

In claim 1, line 9, the term "supplement" following the expression "protein concentrate" has been deleted.

In claim 27, second line, the term "supplement" following the expression "protein concentrate" has been deleted.

Further, the title of the invention has been changed by the examiner to the following title that clearly indicative of the claimed subject matter:

"Nutritional product for enhancing and/or strengthening the immune system of equine foals".

***Examiner's Reasons for Allowance***

2. The following is an examiner's statement of reasons for allowance: claim 1 requires that the "soluble fiber source is derived from at least one ingredient selected from the group consisting of oats, barley, and soybeans. The closest prior art "Fuchs et al." reference specifically excludes the use of a fiber that would induce satiety in paragraphs [0046] [0048] and [0051] of the reference. The reference requires that the supplement of that reference is to have a "soluble, prebiotic fiber" with the requirement that "the fiber selected should not induce satiety." Applicants' claims requires that the "soluble fiber source is derived from at least one ingredient selected from the group consisting of oats, barley, and soybeans," and each of these ingredients are known to induce satiety, as was evident by the articles provided by applicants as Attachment C in the reply filed October 19, 2010: "Optimizing Cardio Health With Oat Beta-Glucans", Gregory Stephens, Functional Ingredients Magazine, April 1, 2005; the article "Barley Beta Glucans Application in Obesity", Peter M. Schkoda, supplement to AgroFOOD industry hi-tech, September/October 2008, Vol. 19, No. 5; the article "Soy Protein Applications" from Protein Foods and Nutrition Development Association of India, March, 2005, Pages 9-11, that teaches that the demand for products that offer satiety benefits and a low glycemic index is growing and in this regard, soy protein fits the bill because it's naturally satiating and offers a low glycemic index."; and "Soybean - the Golden Nugget", Ishi Khosia, Indian Express, April 22, 2006. Therefore, Fuchs excludes the soluble fibers instantly claimed. No motivation to replace fibers taught by Fuchs that do not induce satiety with those that induce satiety in order to enhance and strengthen

the growth of equine foal. Equine foals as disclosed by applicants have unique gastrointestinal tract structure. The combination of Fuchs with Myllymaki, the article Alltech, and optionally further in combination with either of Hallfrisch et al. or Van Lengerich et al. do not teach the claimed nutritional product comprising a polar lipid that has been isolated from its natural source which polar lipid is high in galactolipids and antioxidants; a soluble fiber source that has been fractionated from its natural origin which soluble fiber source; wherein said soluble fiber source is derived from at least one ingredient selected from the group consisting of oats, barley, and soybeans; a nutritine consisting of a source of dietary nucleotides; and a protein concentrate, wherein said polar lipid, said soluble fiber source, said nutritine, and said protein concentrate supplement are present in said nutritional product in respective amounts sufficient to enhance growth and/or strengthen the immune system of equine foals, as instantly claimed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

3. Claims 1-10, 12-17, 19-22, 24-38 are allowed.
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isis Ghali whose telephone number is (571)272-0595. The examiner can normally be reached on Monday-Thursday, 6:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on (571) 272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Isis Ghali/  
Primary Examiner, Art Unit 1611

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